

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1478 – SB 1572

March 16, 2016

**SUMMARY OF ORIGINAL BILL:** Repeals the felony enhancement for third and subsequent convictions for simple possession or casual exchange of a controlled substance.

Enhances a sixth or subsequent driving under the influence (DUI) offense to a Class C felony.

Removes the probation requirement for DUI offenders to remove litter. Repeals Tenn. Code Ann. § 55-10-420, which established the procedures and requirements of the litter removal program.

Requires prior convictions for alcohol-related vehicle offenses, including those committed out-of-state, to be counted as prior convictions for the purpose of enhancing DUI convictions, regardless of when they were committed.

Amends various statutes to reference the new prior conviction criteria established by the bill.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Expenditures – Net Impact – \$342,600/Incarceration\*

**SUMMARY OF AMENDMENT (014383):** Deletes and rewrites the bill such that the only substantive changes are as follows:

The bill as amended repeals the felony enhancement for third and subsequent convictions for simple possession or casual exchange of all controlled substances except heroin. A third or subsequent conviction for simple possession or casual exchange of heroin will continue to be a Class E felony.

Requires any person convicted of carjacking to serve 75 percent of the sentence imposed by the court less any earned and retained sentence credits, but sentence credits may not reduce the time served below 60 percent.

Repeals Tenn. Code Ann. § 55-10-418(e) that required the Tennessee Bureau of Investigation (TBI) to annually report to the Judiciary Committee of the Senate and the Criminal Justice Committee of the House of Representatives the number of times DUI offenses were charged at the time of arrest, if the charges were reported to the TBI, and any associated final disposition received for such arrests.

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## FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

### **Decrease State Expenditures – Net Impact – \$7,900/Incarceration\***

Assumptions for the bill as amended:

#### *Simple Possession/Casual Exchange*

- Under current law, a third or subsequent violation for simple possession or casual exchange is a Class E felony. The bill as amended would repeal the felony enhancement for all controlled substances except heroin.
- Statistics from the Department of Correction (DOC) show an average of 65.1 admissions each year over the last ten years for felony simple possession or casual exchange. These statistics encompass simple possession of any controlled substance. It is assumed that five percent ( $65.1 \times 0.05 = 3.25$  admissions) of the admissions are for the simple possession or casual exchange of a Schedule I or II controlled substance.
- Further, it is assumed that three of the 3.25 admissions are for heroin. In other words, only one conviction every four years is for a Schedule I controlled substance other than heroin.
- The bill as amended will decrease admissions by 62.1 admissions ( $65.1 - 3$ ) each year.
- Statistics from the DOC show the average time served for felony simple possession or casual exchange is 1.29 years (471.17 days).
- According to DOC, the average operating cost per offender per day for calendar year 2016 is \$67.73.
- The bill as amended will decrease recurring state incarceration costs for simple possession or casual exchange by \$1,981,756.57 ( $62.1 \text{ admissions} \times 471.17 \text{ days} \times \$67.73$ ).

#### *Sixth and Subsequent DUI*

- Under current law, a fourth and subsequent DUI offense is punished as a Class E felony. The bill as amended would enhance a sixth or subsequent DUI offense to a Class C felony.
- Statistics from the Department of Safety show an average of 456.8 convictions for fourth and subsequent DUIs each year. However, admission data from the DOC shows an average of 110 admissions per year for felony DUI.
- Given that only 24 percent ( $110/456.8$ ) of all DUI convictions result in incarceration, it is assumed that most offenders serving time for DUI are serving time for a sixth or subsequent felony DUI offense. It is assumed that 50 percent ( $110 \text{ admissions} \times .50 = 55 \text{ admissions}$ ) of the admissions are serving time for sixth or subsequent felony DUI offenses.
- The bill as amended will result in 55 admissions per year being enhanced to a Class C felony.
- Statistics from the DOC show an average time served for felony DUI of 1.29 years (471.17 days). The average time served for a Class C felony is 3.22 years (1,176.10 days). The bill as amended will result in each offender serving an additional 1.93 years (704.93 days).

- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for six (55 x .1178) additional admissions for a total of 61 (55 + 6).
- According to the DOC, 43.7 percent of offenders will re-offend within two years of their release. A recidivism discount of 43.7 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill as amended. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (61 offenders x .437 = 26.66 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 34 offenders [61 offenders – 27 (recidivism discount)] serving an additional 1.93 years (704.93 days) for a total of \$47,744.91 (\$67.73 x 704.93 days). The recurring increase in state incarceration costs for 34 offenders is estimated to be \$1,623,326.94 (\$47,744.91 x 34).

#### *Prior Conviction Criteria*

- Under current law, DUI convictions in other states can be used to enhance a DUI conviction in Tennessee. *State v. Rea*, 865 S.W.2d 923 (Tenn. Crim. App. 1992). Further, prior convictions for vehicular assault, vehicular homicide by intoxication, aggravated vehicular homicide, and adult driving under the influence are treated as prior convictions for DUI. Tenn. Code Ann. § 55-10-405(c). This limits the application to violations of Tennessee law.
- The bill as amended establishes new criteria for prior convictions that not only adds aggravated vehicular assault to the express list of offenses considered as prior convictions for DUI, but also requires any prior conviction, whether committed in Tennessee or another state, for any offense in which an essential element is that the driver's ability to safely operate or be in physical control of a motor vehicle is impaired by reason of intoxication, whether under the influence of alcohol, drugs, or both.
- The bill as amended will result in one (1) additional DUI offense each year being enhanced to a fourth DUI offense that is enhanced to a Class E felony; and two (2) additional DUI offenses each year being enhanced to a sixth DUI offense that is enhanced to a Class C felony that would otherwise be punished as a Class E felony.
- It is assumed that the bill as amended will result in two additional admissions for Class E felony DUI each year and one additional Class C felony DUI each year.
- The average time served for Class E felony DUI is 1.29 years (471.17 days); the average time served for a Class C felony is 3.22 years.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect these admissions.
- A recidivism discount applies, but due to the low number of admissions added by this provision of the legislation, the recidivism discount does not impact the incarceration cost for these admissions.
- The two additional Class E felony admissions will increase recurring incarceration costs by \$63,824.69 [(471.17 days x \$67.73) x 2 admissions].

- The additional admission for Class C felony will result an additional time served of 1.93 years (3.22 years – 1.29 years) or 704.93 days.
- The additional Class C felony will increase recurring state incarceration costs by \$47,744.91 (704.93 days x \$67.73).

#### *Carjacking*

- Statistics from the DOC show that over the last 10 years an average sentence of 9.37 years is received for carjacking and the average time served for carjacking is 5.16 years.
- Currently, persons convicted of carjacking are serving approximately 55.07 percent (5.16 / 9.37) of the sentence they receive.
- The bill as amended would require every offender to serve no less than 60 percent of the sentence received, or 5.62 years (9.37 x 0.6). The bill as amended will result in each offender serving an additional 0.46 years (5.62 years – 5.16 years), or 168.02 days (0.46 x 365.25).
- Statistics from the DOC show an average of 28.9 admissions for carjacking per year over the last 10 years.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for three (28.9 x .1178) additional admissions for a total of 32 (29 + 3).
- According to the DOC, 33.3 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.3 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill as amended. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (32 offenders x .333 = 11 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 21 offenders [32 offenders – 11 (recidivism discount)] serving an additional 0.46 years (168.02 days) for a total of \$11,379.99 (\$67.73 x 168.02 days). The recurring state cost for 21 offenders is \$238,979.79 (\$11,379.99 x 21).

#### *Total Impact to Incarceration Costs*

- The bill as amended will have a net impact of a recurring decrease in incarceration costs of \$7,880.24 [(\$1,623,326.94 increase + \$63,824.69 increase + \$47,744.91 increase + \$238,979.79 increase) - \$1,981,756.57 decrease].

#### *TBI, Courts, District Attorneys, and Public Defenders*

- The original requirement for the TBI to report to the General Assembly on DUI charges was enacted by Public Chapter 921 of the Public Acts of 2010. The fiscal note for that bill did not include any appropriation for TBI to conduct the report. It is assumed that they were able to handle the reporting within their existing resources and that removing the requirement will not significantly impact its operations.
- The TBI confirms that the bill as amended will not significantly impact its operations.
- The bill as amended will result in some felony cases becoming misdemeanor cases, and some felony cases will be enhanced to higher felony cases. However, the bill as amended will only create three new felony cases per year.

- It is assumed that the impact of the bill as amended can be handled within the existing resources of the courts, district attorneys, and public defenders.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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